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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 111

MAX SCHAFFER AND NORMAN SCHAFFER,
PETITIONERS,

vs.

UNITED STATES OF AMERICA.

No. 122

HYMAN KARP AND BENJAMIN T. MARCO,
PETITIONERS,

vs.

UNITED STATES OF AMERICA.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

NO. 111 PETITION FOR CERTIORARI FILED JUNE 11, 1959
NO. 122 PETITION FOR CERTIORARI FILED JUNE 17, 1959
CERTIORARI GRANTED OCTOBER 12, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 111

MAX SCHAFFER AND NORMAN SCHAFFER,
PETITIONERS,

vs.

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No. 122

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vs.

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ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,

—vs.—

MAX SCHAFFER, NORMAN SCHAFFER, HYMAN KARP and BENJAMIN T. MARCO, Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

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[fol. b]

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EXCERPTS FROM DEFENSE SUMMATION IN BEHALF OF DEFENDANT KARP

* * * * * * *

Now, I want to talk to you about the evidence in the case. I am a little hampered in that, because it is hard for me to keep all the evidence in mind. This trial of over two weeks has had a great number of witnesses. We have had over 230 exhibits introduced by the Government, many of them multi-page exhibits.

We have had over a score of exhibits introduced on behalf of the defense, many of them multi-page exhibits, and although they were all offered originally and received against a specific defendant and subject to connection against the others, now the case is in a posture before you where his Honor has dismissed the conspiracy charges. I believe his Honor will tell you at the proper time what

the effect of that is with regard to the evidence. In other words, if five or ten or twenty exhibits, say, those coats, for instance, were introduced here in evidence, and a conspiracy charge has failed, those have no weight, no bearing, no relevancy to the man I represent. Similarly, you heard evidence from various people from Bluefield, West Virginia and about Bluefield, West Virginia. Those have no relevance, no weight, no bearing whatsoever on Mr. Karp.

Now, you as human beings, just as I am a trained lawyer, who for many years made it his business to try to separate things into their proper category, successfully or unsuccessfully, you have a great burden in trying to rid your mind of the evidence which does not apply to Mr. Karp. Similarly, you have similar burdens with the other defendants. But that is the way this case has developed, and we are faced with that problem, and there is nothing we can do about it, except to do our best.

[fol. c] So in talking to you about the evidence, I must now restrict myself to that evidence which has been admitted against Mr. Karp, which is, in the final analysis now, under his Honor's ruling which will be made tomorrow, that which you may consider against him, and you may not consider anything else against him.

Now, no one is going to look into your mind. No one is going to be able to tell you whether you did right or wrong. But you have your conscience and your oath as jurors to guide you, and to insist in so far as it is humanly possible you must do that difficult task.

Now, as I see the evidence against Mr. Karp, stripping away all that which is not relevant to him, such as these coats and these files, which don't bear on him, these files which bear on Mr. Schaffer and Mr. Mareo, it comes down to two categories. The first category comes from what I call a tainted source, Anthony Stracuzza, and the second category comes from a non-tainted source, principally, the FBI.

. . . . . .

Stracuzza, we offer you, is a liar, a perjurer, a thief, a self-admitted thief, a loan shark, a faithless employee—

everything you will. He sat there in that chair and he raised his right hand and swore to God that he was going to tell us the truth. That was his oath, an oath with some significance, ladies and gentlemen, both historically, religiously, and as a matter of law, has certain consequences.

Stracuzza, I offer to you, is a witness who has made his peace with the Government, and who is determined to help the Government in any way he could, because that is the way he is going to help himself and his wife and his brother. [fol. d] You will recall that on the 28th day of July, when the Government arrested the occupants of that room on the fourth floor, they found in it Tony, the witness, his wife, Dorothy—they were both arrested. And shortly thereafter they arrested his brother, Mario.

Now, a case is important from two aspects, and evidence is important from two aspects. One, what was produced to you so that it could meet the test of cross-examination, so that the lies could be exposed and confronted, so that it could be torn down? The Government produced Tony, and he got that treatment. And it is equally important for what was not produced to you.

Where were Mario and Dorothy in this case?

Mr. Moran: I object to this, your Honor.

The Court: Well, the jury can make whatever inferences they want, subject to the law as I will explain it.

Mr. Steinberg: I say, where were Mario and Dorothy?

Mr. Moran will stand up and say to you when his turn comes, why didn't we call them? I have a power of subpoena. All I have to do is get a subpoena from a clerk, give it to a process server, serve it and bring him here.

Do I want to vouch for the credibility of those witnesses? Do I want to put on the wife and the brother of Tony, two people under indictment in this case? Do I want to let Mr. Moran "cross-examine" him? Because the party that calls him, can't cross-examine him; it is the other party that cross-examines. Or do I want to sit back and wait for him to fulfill his burden, the burden imposed on him by law, to prove his case beyond a reasonable doubt, to bring the witnesses that he should bring, and that I should have the right to cross-examine as a hostile witness? That is the purpose of cross-examination.

Did you see Dorothy come here at the behest of the Government? Did you see Mario come here at the behest of the Government? Is that a hole in the case? What [fol. e] could they have added to this case? What could they have told you that would help you come to a proper determination on the evidence? What could they have told you that would have aided you to find where the truth lay in this case?

Let's see what they could have told you.

Dorothy, you will recall, according to Stracuzza, the husband, was a lady with the interesting habit of using two names, Dorothy Stracuzza—first name is Dorothy; last name, married name, is Stracuzza—and Lillian Schafler. He said Lillian was the name she sometimes used, and Schafler was her maiden name, although I think she spelled it a little differently than appeared on the door. That would be something I would like to ask her about on cross-examination.

Similarly, Dorothy was indicted in this case as a defendant. But before the trial the District Attorney severed the case, which means that she doesn't go on trial, and he admitted to you that in a previous indictment involving the three Stracuzzas and some thieves, he similarly severed the case, so she didn't have to appear here.

That is a nice way to treat a lady—don't put her to any inconvenience. You don't put her on trial; you don't try her for the crimes she may be charged with by the grand jury; and when you don't call her to the witness stand, she is not cross-examined by these nasty defense lawyers, who want to ask embarrassing questions.

You have a right and a duty to consider why Dorothy wasn't there.

Did Dorothy know that these items of merchandise were stolen? What would she have said if she had been asked under oath did she know?

You heard what her husband said. I asked him under oath, "Did your wife know?"

And he hedged, finally he said, "No, she didn't know." [fol. f] But when I confronted him with testimony at the previous trial, he said he would be safe to say she did know it, but his final answer was that she didn't know.

Is that one of the benefits that accrues to a witness for the Government in this case, to have his wife tenuously dealt with?

What other benefits accrue to such a witness? He himself testified, you will recall, that he was indicted not only in this case; in which he pleaded guilty shortly before the trial—and that was another revealing little incident—he pleaded guilty to this late in the afternoon, before his Honor, in a civil part, and he was brought out and he pleaded guilty, and he is still awaiting sentence, and that sentence has been adjourned several times at the behest of the Government; he hasn't been sentenced, and he pleaded guilty in the other case, and he hasn't been sentenced.

Why hasn't he been sentenced, ladies and gentlemen?

Incidentally, Mario got the same treatment on the same occasion, at the same time. He came in, pleaded guilty to this indictment, pleaded guilty to the other indictment, and he hasn't been sentenced.

Why haven't they been sentenced, ladies and gentlemen? Is it because when you have a prospective witness and the sword of Damocles hangs over his head, it is then the power of the Assistant District Attorney to make a recommendation to the Court? Is it because when a witness has hanging over him the possibility of going to jail, that he bestirs himself a little more on behalf of the side that has that power?

I have no power to do anything here. I have no power to make recommendations to the Court. I won't be heard. But he has the power.

So you have Dorothy treated in what I think is a fair statement, rather tenderly. You have Mario, the man who, [fol. g] according to his brother, went out with a thousand dollars in cash every day and came back with boxes. Mario is not even produced to you so I could cross-examine him. And the District Attorney will say to you, why don't I call him? Am I going to vouch for that Mario? Do I have any power over him?

So they aren't in the case, they aren't here to shed any light in the case, they aren't here to help you find the truth.

So we have to do the best we can. We then have to rely on Tony, because that is the one they produced.

Now, Tony, as you remember, was a man who swore to tell the truth. If you heard him for several days you must, with your common sense, with your insight, with your experience as human beings, with your experience in dealing every day with people who try to sell you things, people who try to put something over on you, your experience with separating truth from lies, weigh the motives of that man and listen to what he said, and say to yourselves, was he trying to fool me? Was he trying to help me find the truth? Or was he acting a part, designed to help him, his worthless brother and his wife avoid the consequences of what they richly deserved? What was his object here?

You know, one of the strangest things I ever had in a case in my life developed here. Tony would testify very glibly and very quickly about everything, and then on cross-examination he gave answers, and it wasn't until we confronted him with some[illegible]ng that some explanation was forthcoming, and when he got in a hole he would say, "You want me to t[illegible] you about that, counsel? You want me to tell you the [illegible]e story?"

Was he [illegible]xious to give me the whole story, or was he anxious to tap another nail into this man's coffin, to help him?

[fol. h] Remember Tony said on his direct examination that he had nothing to do with the operations prior to a certain date of Berk and Eisenberg—he had absolutely nothing to do with it; that he never had anything to do with the proceeds of the checks. It just happened that I had some checks here, because Mr. Karp was in the habit of keeping all his checks in the regular course of business for his accountant, and I said to him, "How does it happen that in January 1952,"—January 1952, long before he said he ever got any money from Karp, and long before he had anything to do with the finances of these other men—"that the names Dorothy Stracuzza and Lillian Schafler"—spelt (sic) S-c-h-a-f-l-e-r, before they opened the Schafler office—"appeared on the backs of these checks?"

I thought I was contradicting him just on his statement on direct.

He said there was a certain date here, long before I wanted to know why—this was the purpose of cross-examination—and I was amazed; because he had admitted that he was a loan shark; he admitted that he was in a criminal enterprise of lending money at usurious rates; and that he would get an extra hundred dollars for lending a thousand; that he was financing this operation to that extent.

I was stunned; I was amazed. I didn't know that when I asked him that.

What kind of a man are we dealing with? Here is a young man, working as a truckman. The most he made at that time, I think he said, was $70 a week. He has a house—and the amusing thing to me, the house address is "Straight Path"—has a house on Straight Path—although I could think of other names that might be more appropriate—has two cars; he has enough money to go into the loan shark business; and his wife has money in several savings accounts in different names, at a time when he was [fol. i] working as a truckman, and at a time when he says under oath to you that he wasn't stealing from his boss.

Do you believe that?

Now, his Honor will charge you at the appropriate time there is an old maxim, "falsus in uno, falsus in omnibus"—false in one thing, false in everything.

You, according to his Honor's instructions, will be able to find that where a man wilfully and wrongfully and intentionally lies to you about a material fact in a case, you have a right to disregard his entire testimony.

That was one point where he lied.

When did he start stealing? Or how did he account for this wealth?

This business about his stealing, by the way, is very interesting, because although he says he made his peace with the Government at a certain time, he wanted to unburden himself, he wanted to suffer the mental relaxation that comes from telling the truth, and he went to the FBI in September 21, 1953, and threw in his lot with the Government and became a man who wanted to uncover the truth, shortly before this trial he was caught stealing a package—this was after he was cooperating with the Government, while he was preparing to testify in this case—he

was caught stealing a package from a truck, and pleaded guilty.

And what happened to this man? Here is a man who, according to his own testimony, a thousand dollars a day of crooks' prices, stolen goods, a thousand dollars—$5,000 a week less than half value of stolen goods. So let's say that that is about $12,000 a week, day in and day out. He is in the business of stealing and selling, according to him, stolen merchandise.

Here is a man—let's see, $12,000 a week—over a half a million dollars a year, on a yearly basis, and this man, when he is caught as recently as he was caught, what hap-
[fol. j] pened to him? He got a suspended sentence. He got a suspended sentence on the recommendation of a District Attorney who sits here. The Judge gave him a suspended sentence.

Now, that is nice treatment; that is nice treatment, and something anybody in his right mind would want, and it sheds a little more light on Mr. Stracuzza and his motives in testifying, and the weight you can give his testimony, and whether he was here to help you arrive at the truth, or whether he was here to fool you, to do anything he could so that he'd get his 30 pieces of silver.

. . . . . .

[fol. k]

IN UNITED STATES DISTRICT COURT

EXCERPTS FROM GOVERNMENT SUMMATION

Before I begin my summary, however, I wish to address myself, in the way of making a few comments as to some of the remarks that were made in the course of the summations by the defense counsel this morning.

There were allusions from time to time, or suggestions, if you will, as to why the Government had not called certain persons as witnesses, so that they could be subjected to cross-examination by the defense counsel. Two of the names that were prominently mentioned were Mario Stracuzza and Dorothy Stracuzza.

As you recall, during the course of the trial Dorothy Stracuzza, as was indicated, the Government's case against her pertaining to the two indictments that these defendants were brought to trial on, she was severed; she is still a defendant in this court. The charges are still open against her. They have not been dismissed in any way.

As to the other defendant, Mario Stracuzza, it is the Government's representation to you that he could have offered nothing in the way of additional evidence that was not presented to you through his brother. Because if you will recall from the testimony of Agent Miller, both Stracuzzas were interviewed on each and every occasion by him, their story, their testimony, if you will, given to the FBI, was a joint story, and therefore, the testimony of Mario Stracuzza, if he were called to testify, would be in a sense of repetition of all the details that you heard through the witness Anthony Stracuzza.

Furthermore, the Government is not required to call any witness if we believe that there is nothing further that that witness can contribute in the search for the truth.

As Mr. Steinberg told you, and as I will say to you now, he had an opportunity to bring Mario Stracuzza to the witness stand. He also had an opportunity to bring Dorothy Stracuzza to the witness stand. He did not do so for reasons best known to himself.

[fol. 1] Now, in making these comments as to the conduct of the prosecution, there were some criticism as to the extent that the Government failed in its obligation to its citizens to bring out all the facts. I say to you as an assistant United States attorney, my job is not to convict people, but is to bring them here in court, give them a fair chance to meet the charges that the Government has presented against them.

The motto on the building of the Department of Justice in Washington I think fairly indicates the attitude of the Government, as far as its citizens are concerned. It reads:

> "The Government wins when justice is done its citizens in the court."

Now, of course, if you believe that the Government has in some way or other prevented you from getting the full

truth of this entire case, that it in some way here concealed the true facts pertaining to any of these defendants, you have only one duty—you have to march right into that jury-room and acquit everyone of these defendants.

Mr. Steinberg: May I approach the Bench for a moment, please?

The Court: No, you have to say it in public, counsel.

Mr. Steinberg: I respectfully move for the withdrawal of a juror on that remark, as an improper remark.

The Court: I will deny it. You may have an exception.

Mr. Steinberg: Exception.

• • • • • • • •

[fol. m]

IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

C 145-232

UNITED STATES OF AMERICA,

—v.—

DOROTHY STRACUZZA, Defendant.

NOLLE PROSEQUI ENTERED BY GOVERNMENT IN CASE OF DOROTHY STRACUZZA

The filing of this nolle prosequi will dispose of the Government's case against the defendant Dorothy Stracuzza.

Indictment C 145-232 was filed on October 20, 1954. The indictment consist of four counts and names as defendants Anthony Stracuzza, Mario Stracuzza, Dorothy Stracuzza, Max Schaffer, Norman Schaffer, Benjamin T. Marco and Hyman Karp. Count 1 of the indictment charges that the Stracuzzas and Max and Norman Schaffer unlawfully, wilfully ~~and knowingly~~ transported and caused to be transported in interstate commerce, to wit, from the Southern District of New York to Lebanon, Pennsylvania ladies and children's wearing apparel of a value in excess of $5,000,

knowing the same to have been stolen and converted (Title 18, United States Code, Sections 2314, 2) during the period from on or about May 13, 1953 up to and including July 27, 1953. Count 2 of the indictment charges a similar offense by the Stracuzzas and Benjamin T. Marco from the Southern District of New York to Bluefield, West Virginia during the period from on or about June 11, 1953 up to [fol.n] and including July 27, 1953. Count 3 charges a similar offense by the Stracuzzas and Hyman Karp from the Southern District of New York to Fall River, Massachusetts during the period from on or about May 21, 1953 up to and including July 27, 1953. Count 4 of the indictment charges a conspiracy on the part of all the defendants to violate Section 2314 of Title 18, United States Code during the period from on or about September 1, 1952 until the date of the filing of the indictment. (Title 18, United States Code, §371.)

Anthony and Mario Stracuzza pleaded guilty to all counts of the indictment and received a sentence of five years, the sentence on each count to run concurrently with one another and with the sentences imposed on Indictments C 145-233 and C 145-234, the execution of the sentence on each indictment was suspended and the defendants placed on probation for a period of five years. The remaining defendants, namely Max Schaffer, Norman Schaffer, Benjamin T. Marco and Hyman Karp were convicted for the substantive violation charged in the indictment but were acquitted on the conspiracy count, the Court having dismissed Count 4 at the conclusion of the Government's case. An appeal from the conviction has been made by the defendants Max Schaffer, Norman Schaffer, Benjamin T. Marco and Hyman Karp.

The defendant Dorothy Stracuzza is the wife of the co-defendant Anthony Stracuzza and the sister-in-law of the defendant Mario Stracuzza. She is named as a defendant in all four counts of Indictment C 145-232, and is also named as a defendant in Indictments C 145-233 and C 145-234. During the months of June and July 1953 Dorothy Stracuzza assisted her husband Anthony Stracuzza in keeping the records of A. Schafler at 48 West 25th Street, New York City, which was the business name under which

the Stracuzzas conducted their dealings in stolen merchan- [fol. o] dise with the co-defendants Max Schaffer, Norman Schaffer, Benjamin T. Marco and Hyman Karp.

Dorothy Stracuzza has admitted assisting her husband in this business but has denied that she had knowledge of the fact that the merchandise handled by her husband was stolen. The defendant Anthony Stracuzza in his testimony as a witness for the Government at the trial of Max Schaffer et al., stated that his wife Dorothy Stracuzza never knew the extent of his operations and that he never told her that he was dealing in stolen merchandise.

In view of these facts, it is recommended that a nolle prosequi be filed as to the defendant Dorothy Stracuzza on Indictment C 145-232.

Dated: New York, July 28th, 1958.

John T. Moran, Jr., Assistant United States Attorney.

In view of the foregoing recommendation, I hereby direct, with leave of the Court, that an order of nolle prosequi be filed herein as to the defendant Dorothy Stracuzza on Indictment C 145-232.

Dated: New York, July 29, 1958.

Arthur H. Christy, United States Attorney

[fol. p]

In United States District Court
For the Southern District of New York

No. Cr. 145-232

United States of America

—v.—

Hyman Karp

Judgment and Commitment—June 3, 1958

On this 3rd day of June, 1958 came the attorney for the government and the defendant appeared in person and by counsel,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury, of the offense of unlawfully, wilfully and knowingly transporting and causing to be transported in interstate commerce, goods valued in excess of $5000. knowing the same to have been stolen and converted. (Title 18, Secs. 2314 and 2 USC) as charged in count 3 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

[fol. q] It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

on count 3—Two Years and fined $10,000. and to stand committed until fine is paid or he is otherwise discharged according to law.
Bail continued pending appeal.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Thomas F. Murphy, United States District Judge.
Herbert A. Charlson, Clerk.

[fol. r]

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. Cr 145-232

UNITED STATES OF AMERICA

—v.—

BENJAMIN T. MARCO

JUDGMENT AND COMMITMENT—June 3, 1958

On this 3rd day of June, 1958 came the attorney for the government and the defendant appeared in person and by counsel,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury, of the offense of unlawfully, wilfully and knowingly transporting and causing to be transported in interstate commerce, goods valued in excess of $5000. knowing the same to have been stolen and converted. (Title 18, Secs. 2314 and 2 USC.) as charged in count two and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

[fol. s] It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count two—Four (4) Years and fined $10,000. and to stand committed until fine is paid or he is otherwise discharged according to law.
Bail continued pending appeal.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Thomas F. Murphy, United States District Judge.
Herbert A. Charlson, Clerk.